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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 VINAY BARARIA,

13 Defendant.
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Case No.:2:12-cr-00236-JAD-GWF

**Order Denying Defendant's Motion
for Revocation of Magistrate Judge's
Detention Order (#140)**

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16 This is the fourth in a series of orders¹ addressing Defendant Vinay Bararia's
17 persistent challenges to his detention after having his pretrial release revoked in
18 November 2012.

19 Dr. Bararia, a physician, was indicted in June 2012 for conspiracy to distribute a
20 controlled substance and five counts of distribution stemming from a number of
21 controlled buys during which he is alleged to have sold hydrocodone and oxycodone pills
22 to an undercover officer. Although he was granted a pretrial release *inter alia* on the
23 condition that he not order, possess, dispense, or prescribe any controlled substances,
24 Doc. 5, Defendant Bararia soon violated that condition and found himself the subject of a
25 revocation petition. Doc. 13. The Magistrate Judge gave him a second chance to comply
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27 ¹See Docs. 72, 101, 133.
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1 with the release conditions, Doc. 24; Doc. 37 at 161, but Dr. Bararia continued to
2 prescribe controlled substances the very next day—and because his DEA credentials had
3 been surrendered, he did so impermissibly using other doctors’ names. Doc. 54. Upon
4 the government’s second motion and live evidence at the revocation hearing in October
5 2012, the Magistrate Judge concluded that Bararia is a danger to the community and has
6 demonstrated that there is no set of release conditions that he will comply with that will
7 guaranty the safety of the community, and his release was revoked. *Id.* at 9-11.

8 Defendant challenged that detention order with an unsuccessful December 2012
9 motion to reopen and reconsider the detention pending trial (Doc. 55), followed by an
10 unsuccessful appeal of the Magistrate Judge’s denial of that motion. Docs. 72, 82, 101.
11 He filed a second motion to reopen the detention hearing in April (Doc. 95) and was
12 granted leave to supplement that request with a medical evaluation from a privately
13 retained physician opining that Dr. Bararia suffers from a previously undiagnosed
14 medical condition that requires an aggressive, long-term, one-on-one treatment plan that
15 cannot be implemented in the federal detention center. Docs. 95, 96, 99, 133. The
16 Magistrate Judge found, however, that “Bararia has shown a persistent unwillingness to
17 abide by the Court’s release conditions, a demonstrated willingness to violate the law, and
18 a callous disregard for this Court’s orders,” and the “new medical information has no
19 material bearing on the matter of detention, conditions of release, or findings made on
20 revocation because it does not excuse his prior conduct while on release or the findings
21 made on revocation.” Doc. 133 at 7.

22 Defendant now moves for revocation² of this order with an “objection.” Doc. 140.

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24 ²While Defendant styled his filing as an “objection,” Doc. 140, under the flush language
25 in 28 U.S.C. § 636(b)(1), it is more properly framed as a motion for revocation. Objections are a
26 proper response to a magistrate judge’s proposed finding and recommendations; the order now
27 challenged by Defendant was not a recommendation but a final order under 28 U.S.C. §
28 636(b)(1)(A). *Accord*, 18 U.S.C. § 3145(b) (where a party seeks review of a detention order, that
person may file “a motion for revocation or amendment of the order”). Therefore, the court

1 He contends that the Magistrate Judge erroneously relied on statutory presumptions under
2 18 U.S.C. § 3148 when rejecting his latest argument for release and “thus failed to
3 analyze fully whether Defendant’s new information, which the Magistrate Court
4 conceded was new, had a material bearing on whether there exists a condition or
5 combination of conditions that reasonably will assure Defendant’s appearance in court
6 and the safety of the community.” Doc. 140 at 2. Having performed a comprehensive, de
7 novo review pursuant to 28 U.S.C. § 636(b)(1) and Local Rule IB 3-1, and having
8 thoroughly considered the history of the detention issue in this case and evaluated the
9 underlying papers, Defendant’s “objection,” the government’s response, and Defendant’s
10 reply brief, the court affirms the Magistrate Judge’s Order (Doc. 133), overrules the
11 “objection” and denies Defendant’s Motion (Doc. 140).

12 Discussion

13 A. Defendant Mischaracterizes the Magistrate Judge’s Ruling.

14 To begin with, the court finds Defendant’s characterization of the Magistrate
15 Judge’s ruling unsupportable. The Magistrate Judge did not rely on statutory
16 presumptions and “thus fail[] to analyze fully whether Defendant’s new information . . .
17 had a material bearing on whether there exists a condition or combination of conditions
18 that reasonably will assure Defendant’s appearance in court and the safety of the
19 community.” Doc. 140 at 2. The Magistrate Judge found that presumptions applied, but
20 he “separately” and “alternatively” determined that Defendant “is unlikely to abide by any
21 condition or combination of conditions” that will reasonably assure the safety of the
22 community if he is released. Doc. 133 at 5-6. As the Magistrate Judge summarized,
23 Bararia’s “pretrial release was revoked based on the findings that there was probable
24 cause to believe he committed a criminal offense while on release, that there was clear

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26 treats and refers to Defendant’s “objection” as a motion for revocation under § 3145(b).
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1 and convincing evidence he had violated his conditions of release, **and**, pursuant to
2 section 3148(b)(2)(B), that he is unlikely to abide by any condition or combination of
3 conditions.” *Id.* at 6-7 (emphasis added). Each of these bases was considered separately
4 and in the “disjunctive.” *Id.* at 5-6.

5 The Magistrate Judge also carefully and independently considered the impact—or
6 lack thereof—of the new medical information on the detention analysis:

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8 As the record demonstrates, Bararia has shown a persistent
9 unwillingness to abide by the Court’s release conditions, a
10 demonstrated willingness to violate the law, and a callous
11 disregard for this Court’s orders. The new medical information
has no material bearing on the matter of detention, conditions of
release, or findings made on revocation because it does not
excuse his prior conduct while on release or the findings made
on revocation.

12 *Id.* at 7; *see also id.* at 5 (“This Court has twice held . . . that, based on his callous and
13 persistent disregard for this Court’s orders plus his willingness to violate the law and his
14 prior conditions of release, Bararia is unlikely to abide by any condition or combinations
15 of conditions. The new medical diagnosis does not absolve Bararia from his prior
16 behavior or preclude it from consideration.”) (internal citations omitted). This
17 determination is unburdened by any presumption, squarely undermining Dr. Bararia’s
18 assertion that “the dispute centers on whether [he] has offered enough evidence to rebut
19 the presumption that no condition or combination of conditions can provide this Court
20 with the necessary assurance that he poses no danger.” Doc. 140 at 5.

21 The Magistrate Judge further considered—and rejected—Defendant’s contentions
22 that “his Sixth Amendment rights will be implicated if he is not immediately released to
23 pursue treatment in the manner set forth by his privately retained physician,” and that
24 “Bararia’s newly diagnosed health condition requires an aggressive, comprehensive
25 treatment plan that cannot be implemented while he is detained.” *Id.* Thus, the lynchpin
26 of Defendant’s objection—that the Magistrate Judge “failed to analyze fully whether” the
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1 new medical information “had a material bearing on whether there exists a condition or
2 combination of conditions that reasonably will assure . . . the safety of the
3 community”—is unsound.

4 **B. Defendant’s New Medical Diagnosis Has No Material Bearing on the Release**
5 **Determination.**

6 Even if the Magistrate Judge relied on statutory presumptions as *a* reason for
7 denying Bararia’s request to reopen the detention hearing, the decision to deny that
8 motion was proper because the opinion from this privately retained doctor that Defendant
9 can only get the medical treatment he prescribes if Bararia is released has no bearing on
10 the salient inquiry: whether there are conditions of release that will reasonably assure the
11 safety of the community in light of Bararia’s “demonstrated willingness to violate the
12 law” and “callous disregard for this Court’s orders.” Doc. 133 at 7.

13 Although the district court’s review of a magistrate’s detention order is *de novo*,
14 “the district court is not required to start over in every case and proceed as if the
15 magistrate’s decision and findings did not exist.” *United States v. Koenig*, 912 F.2d 1190,
16 1192-93 (9th Cir. 1990). Instead, the district court “should review the evidence before
17 the magistrate and make its own independent determination whether the magistrate’s
18 findings are correct, with no deference.” *Koenig*, 912 F.2d at 1193. The court may
19 reopen the detention hearing any time before trial “if the judicial officer finds that
20 information exists that was not known to the movant at the time of the hearing and that
21 has a material bearing on the issue whether there are conditions of release that will
22 reasonably assure the appearance of such person as required and the safety of any other
23 person and the community.” 18 U.S.C. § 3142(f)(2). “New and material information for
24 Section 3142(f)(2)(B) purposes consists of something other than a defendant’s own
25 evaluation of his character or the strength of the case against him: truly changed
26 circumstances, something unexpected, or a significant event.” *U.S. v. Jerdine*, 2009 WL

1 4906564, at *3 (N.D .Ohio Dec. 18, 2009) (citation omitted); *United States v.*
2 *Rodriquez-Adorno*, 606 F.Supp.2d 232, 239 (D.P.R.2009).

3 Defendant Bararia is detained because he demonstrated himself unlikely to abide
4 by any conditions or combination of conditions of release:

5 [D]espite specific and direct guidance from the Court,
6 [Defendant] violated the terms of his pretrial release just one
7 day after his first revocation hearing. It appears this conduct
8 continued over the course of several months. Having shown
9 such callous disregard for this court's prior order, the
undersigned can only conclude that any other conditions would
be treated with the same disregard. [Defendant] has determined
at every turn to push and exceed the limits of this Court's orders.

10 Doc. 54 at 11. The newly proffered medical opinion has no bearing—let alone a
11 “material” one—on whether Bararia could or would comply with release conditions that
12 ensure the safety of the community pending trial. The opinion's message is not
13 compliance or conditions;³ its thrust is that Defendant will have a better chance of
14 obtaining the prescribed course of treatment from this private physician if he is released.
15 As Defendant summarizes, “Dr. Roitman's reports are clear: . . . Defendant faces a
16 continuous risk of serious harm if his initial treatment is mismanaged due to the
17 challenging nature of his disease.” Doc. 140 at 6. But this report offers the court nothing
18 on which to reassess the community-safety issue. If anything, by emphasizing the
19 Defendant's need for comprehensive, regularly adjusted treatment that, if not closely
20 monitored and frequently reevaluated, may exacerbate his condition, the doctor's opinions
21 cast further doubt on Defendant's likelihood of compliance with any release conditions.
22 Accordingly, after independent analysis, the court agrees with the Magistrate Judge's
23 finding that the Defendant's new medical information has no material bearing on the

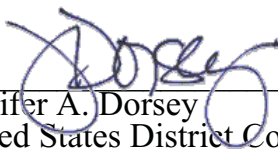
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25 ³ Defendant's contention that Dr. Roitman's report “*explain[s]* these violations, and why,
26 with proper treatment, the Court can be assured of no further violations” is not supported by a
27 citation to any specific page in the report, and the court does not read the report (Doc. 96) to
contain any such assurance.

1 matter of detention, conditions of release, or findings made on revocation, and his
2 “Objection” should be overruled and his motion to revoke the detention order must be
3 denied.

4 **Conclusion**

5 Based on the foregoing and for good cause appearing, **IT IS ORDERED** that
6 Defendant’s Motion for Revocation of the Magistrate Judge’s Detention Order (Doc. 140)
7 is hereby **DENIED**.

8 Dated this 5th day of December, 2013.

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11 Jennifer A. Dorsey
12 United States District Court Judge
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